

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* PATRICIA RUZAKOWSKI and LUKE A. KUTILEK

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Appeal 2006-2511  
Application 10/693,463  
Technology Center 1700

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Decided: September 20, 2006

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Before WALTZ, TIMM, and JEFFREY T. SMITH, *Administrative Patent Judges*.

JEFFREY T. SMITH, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal from the Examiner's final rejection of claims 1 and 3. Claims 4 to 10 have been withdrawn from consideration. (Br. 2). We have jurisdiction under 35 U.S.C. § 134.

We REVERSE.

## BACKGROUND

The present invention relates to a coated article comprising a glass substrate and a copper oxide and manganese oxide coating over the substrate. The claim specifies that the copper-containing component and the manganese-containing component are present in an amount that provides a blue color in transmission. The Specification, page 3, discloses that if the copper component and the manganese component are not present in the appropriate ratios the color in transmission can vary from gray blue to amber. Claim 1, as presented in the Brief, appears below:

1. A coated article comprising:
  - a. a glass substrate; and
  - b. a copper oxide and manganese oxide coating over the substrate, the coating having the molar ratio of copper to manganese in the range of about 0.8 to 1.2 and a blue color in transmission.

The Examiner relies upon the following reference:

Stephens	5,593,134	Dec. 2, 1997 (Dec. 29, 1994)
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Claims 1 and 3 stand rejected under 35 U.S.C. § 102(e) as anticipated by Stephens.

Rather than reiterate the conflicting viewpoints advanced by the Examiner and the Appellants regarding the above-noted rejection, we make reference to the Answer (mailed Apr. 5, 2006) for the Examiner's reasoning in support of the rejection and to the Brief (filed Sep. 12, 2005) for

Appellants' arguments thereagainst. We REVERSE the Examiner's rejection. Our reasons follow.

#### OPINION

In order for the claimed invention to be anticipated under 35 U.S.C. § 102, all of the elements of the claim must be found in one reference. *See Scripps Clinic and Research Found. v. Genentech, Inc.*, 927 F.2d 1565, 1576, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991).

It is the Examiner's position that Stephens discloses a pigment comprised of a substrate with a coating of copper and manganese oxides that can have a blue transmission color (Answer 4). The Examiner further asserts that the substrate can be made of glass. *Id.* We find that Stephens discloses interference pigments based on a platelet-like shaped substrate coated with titanium dioxide and additionally oxidic compounds of copper and manganese (Col. 1, ll. 1-4). Stephens discloses that dark gray powder interference pigments are generated by forming oxidic compounds of copper and manganese on the surface of a titanium dioxide coated platelet-shaped substrate. These pigments are characterized by providing clean colors and an excellent hiding power. (Col. 1, ll. 53-62). Stephens discloses a variety of platelet-shaped substrates which are suitable for the invention, including glass flakes (Col. 2, ll. 43-47). Stephens further discloses that pigments according to the disclosed invention can produce all desired interference colors (Col. 3, ll. 47-50). Exemplary colors produced are presented in Tables 1 and 2 of the reference.

The Examiner asserts that Stephens discloses the claimed blue color based on the disclosure appearing in column 6 and Table 1 (Answer 3). The Examiner further asserts that the ratio of copper to manganese disclosed in Stephens meets the molar ratio of the claimed invention.<sup>1</sup>

For the purposes of anticipation, we must rely upon the interference pigments described in Tables 1 and 2. However, we cannot conclude that the claimed subject matter is anticipated by these teachings of Stephens.

With respect to the disclosure of the color values produced by the disclosed interference pigments, one would have to choose from the seven colors produced in Tables 1 and 2. In addition, Stephens discloses that these colors were achieved by coating the copper and manganese oxide on a titanium dioxide (rutile)/mica pigment. In other words, the color values appearing in Tables 1 and 2 are based upon a mica platelet-shaped substrate not a glass substrate as required by the claims. Also, the ratio for copper and manganese was adjusted to achieve the various color values described in Tables 1 and 2. Thus, to arrive at the present invention one would have to choose the glass flakes as the substrate in place of mica and choose the appropriate ratio for copper and manganese to achieve the claimed blue color. There is no indication that the same ratio for copper and manganese used to achieve the color values on a mica substrate would have been the same for a glass substrate. Based on the above findings, we conclude that in order to arrive at the claimed subject matter, a person having ordinary skill

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<sup>1</sup> The Appellants have not challenged the Examiner's position regarding the molar ratio. (See Brief generally).

in the art would have to carefully pick and choose and combine the various disclosures among the teachings of Stephens to obtain a coated substrate (interference pigment) having the required components and blue transmission color required by the claimed subject matter. While picking and choosing may be entirely proper in making an obviousness rejection under 35 U.S.C. § 103, it has no place in making a rejection under 35 U.S.C. § 102 for anticipation. *See In re Arkley*, 455 F.2d 586, 587-88, 172 USPQ 524, 526 (CCPA 1972). Furthermore, we conclude that Stephens does not provide a disclosure with sufficient specificity to constitute a description of the claimed coated substrate within the purview of 35 U.S.C. § 102. *See In re Schaumann*, 572 F.2d 312, 315, 197 USPQ 5, 8 (CCPA 1978). Accordingly, we do not sustain the rejection of the claims on appeal under 35 U.S.C. § 102(e) as anticipated by Stephens.

#### CONCLUSION

The rejection under 35 U.S.C. § 102(e) is reversed.

REVERSED

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